Filed 12/9/03 P. v. Bridgett CA4/1

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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

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| THE PEOPLE,<br>Plaintiff and Respondent,<br>v.<br>NEWMAN BRIDGETT,<br>Defendant and Appellant. | D042014<br><br>(Super. Ct. No. SCS165958) |

APPEAL from a judgment of the Superior Court of San Diego County, Terry J. Scott, Judge. Affirmed.

Newman Bridgett pleaded guilty to felony possession of a controlled substance (Health & Saf. Code, § 11350, subd. (a); count 1) and giving false information to a peace officer (Pen. Code, § 148.9, subd. (a); count 2). Bridgett admitted the truth of 18 strike priors (Pen. Code, §§ 667, subds. (b)-(i)). The trial court sentenced Bridgett to 25 years to life under the Three Strikes law. Bridgett appeals, contending the court erred in

denying his motion to suppress evidence and in refusing to dismiss either 17 or all 18 strike priors. We affirm the judgment.

## STATEMENT OF FACTS[1]

On January 26, 2002, Officers Macias and Woolsey of the National City Police Department responded to a call from Value Inn, an outdoor motel, regarding a possible forgery. Upon arrival, the officers spoke with the hotel clerk who told them there was a possible forgery in room 41. The officers then proceeded to room 41.

As the officers walked to room 41, they saw Bridgett walking out of the room in their direction. He held a beer in his hand. Bridgett then walked back into the room, came out without the beer, and walked towards the officers. Bridgett's actions concerned Macias who noted that carrying an open container of alcohol is a violation of the Municipal Code. Macias asked Bridgett if he would speak with Woolsey. Woolsey was standing behind Macias. Bridgett walked passed Macias and spoke with Woolsey. Macias proceeded into room 41.

Woolsey had not heard what Macias said to Bridgett. Woolsey then asked Bridgett to turn around and speak with him. When Bridgett turned around, Woolsey noticed a bulge beneath Bridgett's shirt. Woolsey asked Bridgett if he could pat him down for weapons. Bridgett agreed. When Woolsey patted Bridgett, he felt and saw a fanny pack. Woolsey asked him if it was his fanny pack and Bridgett replied yes. Woolsey asked if the contents in the pack were his and if he could look inside the fanny

pack. Bridgett said yes. From the search, Woolsey found a controlled substance later determined to be 1.36 grams of rock cocaine base. In addition the fanny pack contained a glass pipe with residue and other drug paraphernalia. Woolsey then arrested Bridgett.

Woolsey attempted to verify Bridgett's identity but was unable to do so. Bridgett provided Woolsey with the name Wesley James Jr. Woolsey conducted a computer search but was unable to find that name. The officers asked Bridgett an additional four times what his name was but Bridgett did not provide a name. The officers eventually booked Bridgett in jail as John Doe.

At the sentencing hearing, the court reviewed Bridgett's criminal history. When Bridgett was 17 years old, he was committed to the California Youth Authority for reckless driving (Veh. Code, § 23102) and vehicle theft (Veh. Code, § 10851, subd. (a)).

He was paroled in November 1979 and within a year, he was arrested for disorderly conduct while under the influence of drugs (Pen. Code § 647, subd. (f)). Bridgett pleaded guilty, served one day in jail and was sentenced to three years summary probation.

In October 1982, Bridgett was arrested and charged with receiving stolen property (Pen. Code, § 496.1) and second degree burglary (Pen. Code, § 654). He pleaded guilty to the charges in both cases and was sentenced to 270 days and three years of formal probation.

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1 Because a trial was not held, the statement of facts is taken from the hearing for the motion to suppress evidence and from the probation report.

In May 1984, the police arrested Bridgett for fighting in a public place (Pen. Code, § 415, subd. (1)). He served one day in jail and was placed on three-years summary probation. In June 1984, Bridgett was arrested for being under the influence of a controlled substance (Health & Saf. Code, § 11550, subd. (b)). He was sentenced to 30 days and three-years summary probation.

In January 1985, Bridgett was charged with second degree burglary (Pen. Code, § 459). He pleaded guilty and was sentenced to two years in prison. Bridgett escaped from prison in October 1985 and was later returned. He was paroled in January 1986. In October 1988, he was again arrested for vehicle theft (Veh. Code, § 10850, subd. (a)). Bridgett pleaded guilty and was sentenced to 16 months in prison. After he was paroled in January 1990, he violated his parole six months later.

In April 1990, Bridgett was charged with 17 counts of robbery (Pen. Code, § 211) and one count of attempted robbery (Pen. Code, § 211/664) arising out of five different occurrences on different dates. All offenses included the use of a firearm. He pleaded guilty and was sentenced to 21 years, 4 months in prison. He was paroled in May 2001. On January 26, 2002, police arrested Bridgett in the present case. Two weeks later, Bridgett was arrested and charged with five counts of robbing a bank with a dangerous and deadly weapon (Pen. Code § 211; § 12022, subd. (b)(1)). In the bank robbery case, he was sentenced to prison for 34 years to life. In the present case, the court imposed a term of 25 years to life, consecutive to the term imposed in the bank robbery case.

## DISCUSSION

## I

## MOTION TO SUPPRESS

Bridgett contends the court erred in denying his motion to suppress the evidence because the initial contact by the police constituted an illegal detention. We disagree and conclude the initial encounter was consensual and not an assertion of authority.

In reviewing a court's ruling on a motion to suppress evidence, "[w]e defer to the trial court's factual findings, express or implied, where supported by substantial evidence. In determining whether, on the facts so found, the search or seizure was reasonable under the Fourth Amendment, we exercise our independent judgment." (*People v. Glaser* (1995) 11 Cal.4th 354, 362.)

The Fourth Amendment prohibits unreasonable searches and seizures, not voluntary cooperation. (*Florida v. Bostick* (1991) 501 U.S. 429, 439.) Police may approach citizens for the purpose of crime prevention such as investigative stops without any "objective justification." (*United States v. Mendenhall* (1980) 446 U.S. 544, 553.) Facts indicative of a detention are the overwhelming presence of police officers, the brandishing of a weapon, physical touching by the police, and coercive language or tone of voice compelling compliance. (*Id.* at p. 554.) A detention does not occur simply because a police officer approaches an individual and asks a few questions. (*Wilson v. Superior Court* (1983) 34 Cal.3d 777, 789-790.) It occurs only if the police use physical force or authority to restrain the person's liberty. (*Ibid*.) Thus, an encounter is consensual if a reasonable person would have believed that he or she was free to leave the

encounter and return to his or her business. (*People v. Harris* (1986) 184 Cal.App.3d 1319, 1321.)

Here, the record supports the court's finding that Bridgett was free to leave at any time and was not obligated to answer the officers' questions. The officers arrived at a hotel room where a possible forgery was occurring. Bridgett came out of the same room with an open can of beer in his hand and walked towards the officers. Upon seeing the officers, Bridgett immediately turned around and re-entered the hotel room. This activity concerned the officers. As a result, the officers had legitimate reasons to investigate and question Bridgett. When Bridgett came out of the room, Macias asked Bridgett to speak with Woolsey. At this time, Macias left Bridgett outside with Woolsey and left their presence. At no time did Macias brandish a weapon or touch Bridgett. Also, Macias did not raise his voice or yell at Bridgett. Rather, he spoke to Bridgett in a normal tone of voice. When Woolsey spoke with Bridgett, there was no overwhelming police presence because Macias was not even present. Rather, Macias was in the hotel room and out of the presence of Bridgett and Woolsey. When speaking with Bridgett, Woolsey did not draw his weapon, use force, touch him, or speak to him in a coercive manner. At no time did Bridgett refuse to speak with Woolsey. Instead, he cooperated with the officers. He willingly approached and spoke with Woolsey as Macias walked away from him and into the hotel room. Thus, nothing said or done by the officers would suggest to a reasonable person that Bridgett was prohibited from leaving or otherwise terminating the encounter.

Bridgett further argues his consent to a pat down search and the fanny pack search was unlawful because it was given in submission to authority. As previously noted,

Bridgett's encounter with the officers was consensual. Thus, the consent to search given by Bridgett is not tainted by an unlawful detention.

Whether a suspect has provided a valid consent to search is a question of fact and a trial court's findings of fact are reviewed under the substantial evidence standard. (*People v. Williams* (1988) 45 Cal.3d 1268, 1301.) Consent to an entry or search is a recognized exception to the Fourth Amendment's warrant requirement. When the person searched is not in custody, the Constitution requires the state to show the consent was given voluntarily and freely rather than by mere submission to express or implied authority, duress, or coercion. (*Schneckloth v. Bustamonte* (1973) 412 U.S. 218, 248-249.) Whether the consent was voluntary is a factual issue to be resolved by considering all the circumstances surrounding the consent to search. (*Ibid.*) To determine whether a particular entry or search was authorized by consent, courts focus on what a reasonable person would have understood by the exchange between the officer and suspect. (*Florida v. Jimeno* (1991) 500 U.S. 248, 251.)

Bridgett argues the evidence supporting the trial court's factual finding that he consented to the search of his fanny pack is insufficient. We disagree. The record clearly shows consent to the search was not a product of submission to authority. Officer Woolsey testified that when he asked Bridgett for permission to pat him down for weapons, Bridgett agreed. Upon discovering the fanny pack, Woolsey asked Bridgett if the bag was his and if the contents inside were his. He said yes. When asked by Woolsey if he could look inside the fanny pack, Bridget again said yes. The record does not show any coercive conduct by Woolsey. Woolsey did not brandish a weapon or use

verbal coercive tactics to make Bridgett consent to a search. Instead, the record shows Bridgett fully cooperated in the search. Thus, Bridgett's consent to a pat down and to the search of the fanny pack was legally obtained and the court properly denied the motion to suppress evidence.

II

REFUSAL TO DISMISS PRIOR STRIKES

Bridgett contends the trial court abused its discretion by not dismissing either 17 or all 18 prior strike allegations because the nature of the current offense and the age of the strike priors render a sentence other than the three strikes sentence more appropriate. We disagree.

Under Penal Code section 1385, subdivision (a), the court has discretion to dismiss a prior strike allegation in the furtherance of justice. (*People v. Superior Court* (*Romero*) (1996) 13 Cal.4th 497, 529-530.)

The language "in furtherance of justice" requires the court to consider the constitutional rights of the defendant and the interests of society in determining whether to dismiss a prior strike. (*People v. Orin* (1975) 13 Cal.3d 937, 945.) "'[I]n ruling whether to strike or vacate a prior serious and/or violent felony conviction allegation or finding under the Three Strikes law, on its own motion, "in furtherance of justice" pursuant to Penal Code section 1385(a), or in reviewing such a ruling, the court in question must consider whether, in light of the nature and circumstances of his present felonies and prior serious and/or violent felony convictions, and the particulars of his background, character, and prospects, the defendant may be deemed outside the scheme's

spirit, in whole or in part, and hence should be treated as though he had presently not committed one or more felonies and/or had not previously been convicted of one or more serious and/or violent felonies.'" (*People v. McGlothin* (1998) 67 Cal.App.4th 468, 473-474, citing *People v. Williams* (1998) 17 Cal.4th 148, 161.)

Bridgett argues that the present offense of possession of a controlled substance is a minor one and to penalize him under the Three Strikes law is an abuse of discretion. We disagree. The court was aware of its discretion to strike Bridgett's prior convictions. However, in light of Bridgett's extensive criminal record and prospects, we conclude the court did not abuse its discretion in finding Bridgett a candidate within the scheme of the Three Strikes law. The record shows Bridgett's criminal history dates back to 1979. In addition to the present offenses, Bridgett has repeatedly been convicted of criminal acts including vehicle theft, two acts of second degree burglary, a string of 17 robberies involving a firearm, and attempted robbery with a firearm. After serving 10 years in prison for his last strike, Bridgett was paroled. Bridgett committed the present offenses eight months later as a parolee at large. When arrested for the present offenses, Bridget refused to cooperate with the officers by providing a false name. Bridgett then secured his bail for these offenses based on the false name and false information. About two weeks later, Bridgett committed armed bank robbery. Overall, Bridgett has been continuously in prison or on parole for the last 23 years. When not in prison, he has been unsuccessful on probation and has repeatedly violated his parole. In addition, Bridgett escaped from prison in 1985 while serving his second degree burglary sentence. Such

recidivism is a factor to consider when determining a defendant's appropriate sentence. (*People v. Cline* (1998) 60 Cal.App.4th 1327, 1337-1338.)

Bridgett further argues that the age of the strike priors would allow the court to dismiss the strikes. We disagree. In *People v. Humphrey* (1997) 58 Cal.App.4th 809, 813, the court noted that a crime-free cleansing period would allow a conviction to be stricken if it was too remote in time. Here, Bridgett has led a continuous life of crime after every prior criminal act. Bridgett spent more than 10 years in prison for his last strike consisting of 17 counts of robbery and one count of attempted robbery. Then, Bridgett was released on parole and within eight months he committed the present offenses and armed robbery. Bridgett did not commit a crime during the previous 10-year period because he was in prison, not because he was living a crime free life. These facts do not support a reasonable conclusion that Bridgett may be deemed to be outside the spirit of the three strikes law. Thus, the court did not abuse its discretion in refusing to dismiss either 17 or all 18 strike priors.

DISPOSITION

The judgment is affirmed.

HUFFMAN, J.

WE CONCUR:

McCONNELL, P. J.

HALLER, J.